

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Brentwood
150 City Park Way
Brentwood, California 94513
Attn: Housing Manager

DRAFT

(Space Above This Line for Recorder's Use Only)
[Exempt from recording fee per Gov. Code § 27383]

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the "Agreement") is entered into as of _____ (the "Effective Date"), by and between TH Apricot Way Brentwood LLC, a California Limited Liability Company ("Developer"), and THE CITY OF BRENTWOOD (the "City"). Developer and City agree as follows, with reference to the following facts:

RECITALS

Developer owns that certain real property located in the northwestern portion of Brentwood, 1777 Apricot Way (Subdivision 9610) and identified as the Trailside property, Assessor's Parcel Numbers 019-092-13 and 019-092-034010-100-014 ("Site").

- A. City is acting to carry out its obligations under its General Plan, Ordinance No. 1014 (Brentwood Municipal Code Chapter 17.725) (the "Ordinance") and any implementing regulations (collectively, the "City Inclusionary Housing Requirements"), and Developer agrees to comply with the City Inclusionary Housing Requirements.
- B. City Council adopted Ordinance 1014 on April 28, 2020, thereby codifying the requirement that developers of residential developments of five or more lots or dwelling units fulfill an affordable housing obligation of two percent (10%) of the total number of dwelling units as affordable units (the "Ten Percent Affordability Requirement"). The Ordinance provided as follows:

Developers of residential developments of five or more lots or dwelling units designed and intended for residential occupancy shall construct or make possible the construction of a minimum of ten percent of the total number of dwelling units within the residential development as Affordable Units, allocated to income levels as set forth in this chapter, or as provided in an affordable housing agreement which specifies the means of satisfying this chapter. The foregoing requirement shall be applied prior to the application of a density bonus and no more than once to an approved residential development, regardless of changes in its character or ownership, provided that the total number of dwelling units does not change.

- C. Developer and City agree that six (6) Units (3 Duet units) on the Site, as described in Legal Description of Affordable Units ("Restricted Units"), attached as Exhibit A hereto and incorporated herein by reference, shall be subject to the conditions and restrictions, and the rights of City as specified herein (each a "Restricted Units and collectively, the "Restricted Units"). The remaining units shall be referred to as the "Non-Restricted Units."

AGREEMENT

NOW, THEREFORE, Developer and City agree as follows:

ARTICLE 1 SALE OF RESTRICTED UNITS

- 1.1 Defined Terms. The following terms shall have the meanings set forth in this Section 1.1:
- A. "Affordable Housing Cost" shall be as defined in Health and Safety Code Section 50052.5 or any successor statute thereto. If the statute is no longer in effect and no successor statute is enacted, the City shall establish the Affordable Housing Cost for purposes of this Agreement. For purposes of determining the Affordable Housing Cost: (i) the purchase price for a 2-bedroom Restricted Unit shall be established using the assumption that the Eligible Household purchasing the Unit is comprised of three persons, (ii) the purchase price for a 3-bedroom Restricted Unit shall be established using the assumption that the Eligible Household purchasing the Unit is comprised of four persons; (iii) the purchase price for a 4 bedroom Restricted Unit shall be established using the assumption that the Eligible Household purchasing the Unit is comprised of five persons; and (iv) the purchase price for a 5 bedroom Restricted Unit shall be established using the assumption that the Eligible Household purchasing the Unit is comprised of six persons.
- B. "Eligible Household" shall mean and include a person or household (i) meeting the definition of "Very Low Income Household" or "Low Income Household" under this Section 1.1; (ii) meeting the definition of a First Time Homebuyer; and (iii) who otherwise meets Developer's standard criteria for determining eligibility for occupancy, which may include an evaluation of the applicant's ability to pay mortgage, employment status and credit history. These standard criteria may vary from time to time, but must be uniformly applied at all times.
- C. "First Time Homebuyer" shall mean and include a person or household, no member of which has had any of the following interests in real property in his or her primary residence in the three years preceding the date of purchase of the Unit: fee simple, joint tenancy, tenancy in common, life estate, shareholder in a cooperative or interest held in trust that would continue on to ownership if held.

- D. "Very Low Income Household" shall mean a person or household whose annual gross income does not exceed 50% (which percentage shall be adjusted as provided in Title 25, Section 6932 of California Code of Regulations) of the Median Income (as defined below).
- E. "Low Income Household" shall mean a person or household whose annual gross income does not exceed 80% (which percentage shall be adjusted as provided in Title 25, Section 6932 of California Code of Regulations) of the Median Income (as defined below).
- F. "Moderate Income Household" shall mean a person or household whose annual gross income does not exceed 110% (which percentage shall be adjusted as provided in Title 25, Section 6932 of California Code of Regulations) of the Median Income (as defined below).
- G. "Median Income" is the area-wide median gross yearly income in Contra Costa County, adjusted for household size, as established from time to time by the U.S. Department of Housing and Urban Development ("HUD"). In the event that such income determinations are no longer published or are not updated for a period of at least 18 months by HUD, Median Income shall mean the area-wide median gross income for households in Contra Costa County, adjusted for family size, as published from time to time by the California Department of Housing and Community Development ("HCD"). In the event that such income determinations are no longer published, or not updated for a period of at least 18 months, the City shall provide Developer with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD or HCD.

1.2 Affordability Requirements and Restrictions

- A. Developer shall construct 3 Duet units for a total of six (6) Restricted Units in the Development. The six (6) Restricted Units will be sold by Developer to Moderate Income (2 units), Low Income (2 units), and Very Low Income (2 units) Households ("Owner-Occupied Restricted Units").
- B. All Restricted Units within a residential development shall be comparable to the market-rate units in exterior design, quality, materials, architectural elements and overall construction quality, as well as number and proportion of bedroom types. If approved by the Planning Commission in the design review approval process as specified in Section 17.725.006 D, Restricted Units may include reduced front, side and backyard landscaping and may be smaller in size or may be duet-style products. Otherwise, Restricted Units shall be comparable to the "standard" landscaping and size. In addition, all Restricted Units shall include the same or similar interior amenities offered for market rate units within a residential development.
- C. The Restricted Units shall be constructed in the location and in accordance with the schedule of construction set forth in Exhibit B, Location of Restricted Units and Schedule of Construction. All Restricted Units in a residential development or phase of a residential development shall be constructed prior to or concurrently with market-rate units, as set forth, and in the location specified, in a schedule of construction approved by the City and

set forth in this agreement. The building permits for the last ten percent of the non-restricted dwelling units shall not be issued until the last Restricted Unit has been issued a building permit and construction of the last Restricted Unit has begun.

City shall have ninety (90) days following the date that an occupancy permit is issued for a Restricted Unit to find a qualified buyer to purchase such unit. In the event City fails to find a qualified buyer within such ninety (90) day period, Developer shall have the right, but not the obligation, to sell the applicable Restricted Unit at market price and pay the in-lieu fee pertaining to the unit without any further action by City or Developer or the obligation to obtain further approval from City Council.

- D. Developer shall make a written designation to City, at the time the final subdivision map for the Site is recorded, of those Units that shall be Owner-Occupied Restricted Units, which designation shall be consistent with the terms of this Agreement, including without limitation Exhibit B. The total number of Owner-Occupied Restricted Units being offered for sale in accordance with this Article 1 shall be as required by Section 1.2.A. above. During the Term (as defined in Section 3.3) of this Agreement, the Owner-Occupied Restricted Units shall be subject to all of the requirements of this Agreement, including without limitation the following additional restrictions and requirements:
1. Each Owner-Occupied Restricted Unit shall only be sold to and be occupied by an Eligible Household. The Owner-Occupied Restricted Units shall only be sold to and be occupied by Low Income Households at a price that does not exceed the Affordable Housing Cost for Low Income Households.
 2. The income of all persons residing in the Owner-Occupied Restricted Unit shall be considered for purposes of calculating the applicable income of the Eligible Household.
 3. The Owner-Occupied Restricted Units shall only be sold to Eligible Households approved by City in accordance with this Agreement, the City Inclusionary Housing Requirements and the City's Affordable Housing Program. Developer shall work with City to obtain names of Eligible Households certified or maintained by City in accordance with City's Affordable Housing Program. In the event City no longer certifies or maintains a list of Eligible Households, at least thirty (30) calendar days prior to any proposed sale or other transfer of any Owner-Occupied Restricted Unit during the Term, Developer shall submit to City: (a) a copy of the written agreement of purchase and sale; (b) the prospective purchaser's/transferee's income certification, evidence of the purchaser's/transferee's status as an Eligible Household, a list of all assets owned by the prospective purchaser/transferee and any information reasonably necessary to enable City to determine compliance with the terms of this Agreement, in a form reasonably approved by the City; and (c) the income certification to be provided to any lender making a loan on the Owner-Occupied Restricted Unit. The City may require documentation reasonably evidencing and supporting the income and other financial information contained in

the certifications, including the prospective purchaser's/transferee's income most recent income tax return. Within thirty (30) calendar days from receipt of the documentation, City shall render a decision of eligibility or noneligibility. If the prospective purchaser/transferee qualifies as an Eligible Household, the purchase price of the Owner-Occupied Restricted Unit is within the definition of Affordable Housing Cost and the sale or transfer complies with the City Inclusionary Housing Requirements, the City shall so certify in writing within such thirty (30) calendar days, and upon request shall execute a certificate, in recordable form, confirming that the proposed transaction complies with the requirements of this Article 1. If the prospective purchaser/transferee does not qualify as an Eligible Household, the purchase price of the Owner-Occupied Restricted Unit is not within the definition of Affordable Housing Cost or the sale or transfer does not comply with the City Inclusionary Housing Requirements, the City shall so notify the Developer in writing, within such thirty (30) calendar days, stating the basis for its determination in reasonable detail and the Developer shall not sell the Owner-Occupied Restricted Unit to such non-Eligible Household.

4. THERE SHALL BE NO SALE OR OTHER TRANSFER OF THE OWNER-OCCUPIED RESTRICTED UNIT WITHOUT THE WRITTEN CERTIFICATION BY CITY THAT THE PURCHASER / TRANSFEEE IS AN ELIGIBLE HOUSEHOLD, THE PURCHASE PRICE OF THE OWNER-OCCUPIED RESTRICTED UNIT IS WITHIN THE DEFINITION OF AFFORDABLE HOUSING COST AND THE SALE OR TRANSFER COMPLIES WITH CITY'S INCLUSIONARY HOUSING REQUIREMENTS. ANY SALE OR OTHER TRANSFER OF THE OWNER-OCCUPIED RESTRICTED UNIT IN VIOLATION OF THIS AGREEMENT SHALL BE VOID.
5. EACH PURCHASER OF A OWNER-OCCUPIED RESTRICTED UNIT FROM DEVELOPER SHALL ENTER INTO AND RECORD AT THE CLOSE OF ESCROW A REFINANCE AND RESALE LIMITATION AGREEMENT AND OPTION TO PURCHASE ("LIMITATION AGREEMENT"), IN A FORM SIMILAR TO EXHIBIT C, ATTACHED HERETO, SUPPLIED BY AND APPROVED BY CITY, AND FOR THE BENEFIT OF CITY. UPON RECORDATION OF THE LIMITATION AGREEMENT: (A) THIS AGREEMENT SHALL HAVE NO FURTHER FORCE OR EFFECT AS AN ENCUMBRANCE AGAINST THE OWNER-OCCUPIED RESTRICTED UNIT ENCUMBERED BY THE LIMITATION AGREEMENT; AND (B) DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE OWNER-OCCUPIED RESTRICTED UNIT, ENCUMBERED BY THE LIMITATION AGREEMENT, INCLUDING WITHOUT LIMITATION ANY RESPONSIBILITY FOR COMPLIANCE BY THE BUYER OR ITS SUCCESSORS WITH THE TERMS AND CONDITIONS OF THE LIMITATION AGREEMENT SIGNED BY PURCHASER, PROVIDED

THAT DEVELOPER HAS COMPLIED WITH THE TERMS OF THIS AGREEMENT.

- E. Developer's execution of this Agreement and compliance with the terms and conditions herein, shall be deemed full and final satisfaction of the City Inclusionary Housing Requirements applicable to the Project.

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**ARTICLE 2
MAINTENANCE AND MANAGEMENT**

2.1 Maintenance and Management. During the Term (as defined in Section 3.3 below) of this Agreement, Developer agrees to maintain the improvements and landscaping including backyards, side yards and front yards on the Restricted Units in a clean and orderly condition and in good condition and repair and to keep the Restricted Units free from accumulation of debris and waste materials.

Upon the sale of an Owner-Occupied Restricted Unit, the Eligible Household that purchased the Owner-Occupied Restricted Unit will maintain the landscaping on that unit. Upon the conveyance of the Rental Restricted Units to City, the City or its property manager will maintain the landscaping on the Rental Restricted Units.

2.2 Effect of Article 2. This Article 2 shall terminate and be of no further force and effect upon the first to occur of: (a) the last day of the Term; or (b) the closing of the sale by Developer of, and/or the transfer of title to, the last Restricted Unit pursuant to Article 1 above.

**ARTICLE 3
GENERAL PROVISIONS**

3.1 Conditions of Approval. This Agreement shall not supersede any conditions of approval for the Development pursuant to the Ordinance or other applicable City Inclusionary Housing Requirements, but is intended to be consistent with the Ordinance and other applicable City Inclusionary Housing Requirements. In the event of any conflict between this Agreement and the City Inclusionary Housing Requirements, the City Inclusionary Housing Requirements shall prevail.

3.2 Notices. Notices required to be given to City or to Developer shall be given by hand delivery, recognized overnight courier (such as UPS, DHL or FedEx) or certified mail, return receipt requested, to the following addresses, or to such other address(es) as a party may designate from time to time by written notice to the other:

To City:
City of Brentwood
Housing Division
150 City Park Way
Brentwood, CA 94513

To Developer:
TH Apricot Way Brentwood LLC
A California Limited Liability Company
ADDRESS NEEDED

3.3 Duration. The covenants set forth herein on the Restricted Units shall be covenants running with the land and shall inure to the benefit of the City and its successors and assigns, and subject to any shorter time limitations specifically set forth herein, shall be enforceable by the City and its successors and assigns, for a period of forty-five (45) years from the date of recording of this Agreement (the "Term"). The parties agree that for the Term, all future

deeds or transfers of interest shall show or reference the applicable restrictions of this Agreement. Upon recordation of a Resale and Refinance Limitation Agreement and Option to Purchase, this Agreement shall have no further force or effect as an encumbrance against the Owner-Occupied Restricted Unit to which such Limitation Agreement pertains, and Developer shall have no further obligations or liabilities with respect to such Owner-Occupied Restricted Unit, including without limitation any responsibility for compliance by the buyer or its successors with the terms and conditions of the Limitation Agreement, provided that Developer has complied with the terms of this Agreement.

- 3.4 No Discrimination. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, physical or mental disability, age, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Restricted Units, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Restricted Units.
- 3.5 Amendment. This Agreement may be amended only in writing by City and Developer.
- 3.6 No Impairment of Lien. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Site shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.
- 3.7 Successors and Assigns.
- A. Binding Effect; Covenants Run with Land. The covenants contained in this Agreement shall inure to the benefit of the City and its successors and assigns and shall be binding upon Developer and any successor in interest as owner of fee title to the Site, or any part thereof. Upon the transfer by Developer of all of its interest in the Site, all references in this Agreement to Developer thereafter shall mean and refer to such successor in interest of Developer as may then be the owner of the Site. In the event that Developer transfers the Site to more than one successor in interest, all successors in interest shall be collectively required to comply with the provisions of this Agreement and shall be jointly and severally liable for any breach or failure to comply, unless each successor and City enter into an agreement outlining the specific obligations of each successor for compliance with this Agreement. The covenants shall run in favor of City and its successors and assigns for the entire period during which such covenants shall be in force and effect. City, and its successors and assigns, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach.

- B. Transfer by Developer of Site. Except as expressly permitted by this Section 3.7.B, Developer shall not sell, transfer, convey, assign or ground lease the Site or any part thereof or interest therein (a "Transfer") during the period between the date of recordation of this Agreement and the closing date for the sale or transfer of the last Restricted Unit to be sold or transferred pursuant to Article 1 above without prior written approval of the City. The City's approval shall not be unreasonably withheld or delayed. This restriction shall not apply to (i) any Transfer of a Unit to an individual homebuyer or City, (ii) any Transfer of Developer's interest in the Site to any trust, partnership, corporation, limited liability company or other entity that is managed and controlled by Developer whether through any trust, partnership, corporation, limited liability company or other entity, or (iii) any Transfer after the closing date for the last Restricted Unit sold pursuant to Article 1 above. This restriction on Transfer shall not be deemed to limit or restrict the making of dedications or granting of easements or permits to facilitate the development of the Site, or to limit or restrict the sale of any individual Units. This restriction on Transfer shall also not be deemed to prohibit, limit or restrict the assignment or granting of any security interests in the Site for the purpose of securing loans or funds to be used for financing the construction of the improvements on the Site, or the exercise by any lenders of their rights and remedies, including without limitation foreclosure, under the agreements and instruments evidencing or securing any such financing.
- 3.8 No Third Party Beneficiaries. Notwithstanding anything in this Agreement to the contrary, there are no third party beneficiaries of this Agreement.
- 3.9 Effect of Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall have any force or effect on any buyer of a single Unit or its right, title or interest in or to such Unit, except that buyers of Owner-Occupied Restricted Units shall execute and be subject to the Refinance and Resale Limitation Agreement and Option to Purchase attached hereto as Exhibit C. The foregoing exemption and release shall be self-executing and require no further instruments or assurances to be effective.
- 3.10 Default.
- a. Any failure by Developer to perform any term or provision of this Agreement shall constitute an "Event of Default" (1) if Developer does not cure such failure within thirty (30) days following written notice of default from City, or (2) if such failure is not of a nature which cannot reasonably be cured within such thirty (30) day period, Developer does not within such thirty (30) day period commence substantial efforts to cure such failure or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.
 - b. Any notice of default given hereunder shall specify in detail the nature of the failure in performance alleged by City and the manner in which such failure of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein

specified for cure of a failure to perform, Developer shall not be considered to be in default of this Agreement for any purposes.

- c. Any failure or delay by City in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- d. In the event of an Event of Default under this Agreement, City shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other remedy proceedings to cure, correct or remedy such Event of Default.
- e. Notwithstanding the foregoing, in the event that Developer fails to comply with the terms of this Agreement, City may suspend issuance of building permits for Non-Restricted Units, building inspections of Non-Restricted Units, or issuance of occupancy permits for Non-Restricted Units, or pursue any other remedy available to it.

3.11 California Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

3.12 Severability. Should any provision of this Agreement be found invalid or unenforceable by a court or other body of competent jurisdiction, said invalidity, unenforceability or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

3.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, City and Developer have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized.

CITY:
THE CITY OF BRENTWOOD

DEVELOPER:
TH APRICOT WAY BRENTWOOD LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY

By: _____
Name: Tim Y. Ogden
Its: City Manager

Date: _____

By: _____

Name: _____

Its: _____

ATTEST:

By: _____
Name: Margaret Wimberly
Its: City Clerk

By: _____

Name: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Name: Katherine Wisinski
Its: City Attorney

SIGNATURES MUST BE NOTARIZED

EXHIBIT A

Legal Description

EXHIBIT B

Schedule of Construction
(and Location of Restricted Units)

EXHIBIT C

Refinance and Resale Limitation Agreement and Option to Purchase